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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

WHITE LAKE MUTUAL WATER CO.,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant;

UNITED STATES OF AMERICA,

Counterclaimant,

v.

WHITE LAKE MUTUAL WATER CO.,

Counterclaim Defendant.

CIV. S-04-2565-LKK/DAD

**STIPULATION AND ORDER FOR
COMPROMISE SETTLEMENT**

WHITE LAKE MUTUAL WATER COMPANY, plaintiff and counterclaim defendant
("WLMWC"), and the UNITED STATES OF AMERICA, defendant and counterclaimant
("United States"), as the parties to the above-captioned action ("Parties"), through their

undersigned attorneys, hereby agree and stipulate, subject to the approval of the Court as provided for hereon, as follows:

1. The Parties enter into this agreement to establish a formula for cost sharing for the operation and maintenance of certain drainage ditch segments and related facilities that handle agricultural drainage from the service area of WLMWC and that are the subjects of reciprocal drainage easements affecting the titles to the properties conveyed by the deed transfers referenced in Appendix A hereto. The properties affected by the drainage easements consist of properties conveyed by Burkhard Investment Company through intermediate transferees to WLMWC (Appendix A, paragraph (a)) and to the United States (Appendix A, paragraph (b)), the latter property being administered by the Fish and Wildlife Service, an agency of the Department of the Interior.

2. Definitions: The "Boundary Ditch" is a drainage ditch segment whose center line is described in Appendix B hereto. The "Lower Ditch" is a drainage ditch segment whose upper end is the lower end of the Boundary Ditch and whose center line is described in the approximate courses in Appendix C hereto. The "Terminal Pumping Station" is located at the downstream terminus of the Lower Ditch; its two pumps and gravity drain convey drainage waters at that location through a levee, to sloughs connecting to the San Joaquin River. "Cleaning" of ditches means removal of unconsolidated materials.

3. The parties contemplate that the Boundary Ditch and the Lower Ditch can be operated in a manner that accommodates the drainage from the WLMWC service area without any widening of the ditches beyond their present width. To the extent that operation in this manner ceases to be possible, this agreement is subject to reopening and may be modified as herein provided.

4. Cleaning of the Boundary Ditch and Lower Ditch, which is anticipated to occur some time during the months of May through September, as well as preventive and corrective maintenance on the Terminal Pumping Station, will be scheduled solely by the United States. During any calendar year the United States will determine whether unconsolidated materials are obstructing ditch flow and may, in its discretion, forego cleaning. If WLMWC disputes

1 the decision of the United States to forego cleaning and asserts that unconsolidated materials
2 are obstructing ditch flow to the degree that cleaning is required, and if the matter cannot be
3 resolved by negotiation within a reasonable time up to one month following written request by
4 WLMWC for such cleaning, then the Parties shall proceed to resolve the dispute as provided
5 in paragraph 23, below.

6 5. The costs of operating and maintaining the Boundary Ditch, the Lower Ditch and
7 the Terminal Pumping Station, incurred from 2003 until further order of this Court or further
8 written agreement of the Parties, shall be borne by the Parties in the following proportion:
9 Forty-Four Percent (44%) by WLMWC, and Fifty-Six Percent (56%) by the United States.

10 6. Except for the Boundary Ditch and Lower Ditch defined above, WLMWC hereby
11 forever releases and waives all claims of easements or rights to drain across the land owned
12 by the United States and conveyed in the instruments listed in Appendix A, paragraph (b),
13 hereto. WLMWC shall hold harmless, indemnify and defend the United States from any
14 claim, by it or anyone else, for costs of operation and maintenance of any drainage ditch or
15 facility located on any of the property conveyed in the instruments listed in Appendix A,
16 paragraph (a), hereto.

17 7. Except as provided for herein, the United States forever releases and waives any
18 claims for costs of operation and maintenance of the Boundary Ditch, Lower Ditch and
19 Terminal Pumping Station defined above.

20 8. Except as provided for herein, WLMWC shall not be liable to the United States for
21 any costs of operation and maintenance of any drainage ditch or facility located on any of the
22 federal property conveyed in the instruments listed in Appendix A, paragraph (b), hereto.

23 9. Operation and maintenance costs for the Boundary Ditch, the Lower Ditch and the
24 Terminal Pumping Station have been incurred but not billed by the United States during
25 calendar years 2002, 2003, 2004 and 2005. The manner in which WLMWC shall pay its 44%
26 share of those costs is as follows: The United States has presented to WLMWC evidence of
27 2002, 2003 and 2004 expenditures by it totaling \$54,300, and requests the 44% sharing as to
28 costs totaling \$52,249. The United States will forego reimbursement of 2002 costs attributed

1 to employee labor and services. The United States may present evidence of further such
2 expenditures incurred between January 1, 2005, and the filing date of the Order filed by the
3 Court approving this stipulation (hereinafter, "Order"; "pre-Order"). WLMWC may verify
4 that the expenditures reflected therein are in fact related to operation and maintenance of the
5 Boundary Ditch, the Lower Ditch or the Terminal Pumping Station. To pay WLMWC's 44%
6 share of such verified 2003, 2004 and pre-Order 2005 expenditures, WLMWC shall, upon
7 request by the United States, pay operation and maintenance costs incurred on or after the
8 filing date of the Order, directly and in full, until the cumulative total paid under this term by
9 WLMWC reaches 44% of the sum of the cumulative verified 2003, 2004 and pre-Order 2005
10 expenditures by the United States plus 44% of the operation and maintenance costs incurred
11 on or after the filing date of the Order.

12 10. After the filing date of the Order, the Parties contemplate that the United States
13 will perform or arrange for the performance of all of the operation and maintenance work
14 done on the Boundary Ditch, the Lower Ditch and the Terminal Pumping Station. Upon
15 request, WLMWC shall pay its 44% proportionate share of the cost thereof.

16 11. The United States may, to the extent it deems necessary, remove any beaver dams
17 obstructing the Boundary Ditch or the Lower Ditch. The United States shall not request
18 reimbursement therefor. WLMWC shall not remove any beaver dams on the Boundary Ditch
19 but may request that the United States remove beaver dams. If WLMWC disputes the
20 decision of the United States not to remove a beaver dam, and asserts the beaver dam is
21 obstructing ditch flow to the degree that removal is required, and if the matter cannot be
22 resolved by negotiation within a reasonable time up to one month following written request
23 for such removal by WLMWC, then the Parties shall proceed to resolve the dispute as
24 provided in paragraph 23, below.

25 12. Each of the Parties shall designate a person to serve as a point of contact, and the
26 designated persons shall confer not later than May of each year on operation and maintenance
27 work to be done, scheduling, and disposal arrangements for sediments and spoil. Should the
28

1 annual conference not take place, the lack of the annual conference shall not affect any rights
2 of the Parties hereunder.

3 13. The sediments and spoil removed from the Boundary Ditch during annual
4 maintenance shall be placed at locations designated and agreed upon by Party representatives
5 during the annual conference. The locations shall be on the WLMWC side of the property
6 boundary in the next two years in which ditch cleaning is conducted after 2005. After the
7 second of the two post-2005 years mentioned in the preceding sentence, such sediments and
8 spoil shall be placed on the United States side for the next year in which ditch cleaning is
9 conducted, then alternated between the WLMWC side and the United States side for years in
10 which ditch cleaning is conducted thereafter.

11 14. If either Party, in its sole discretion, determines that the sediments and spoil
12 removed from the Boundary Ditch or the Lower Ditch by the maintenance contemplated
13 hereunder and placed upon, or to be placed upon, its land is detrimental to its land or land use,
14 it may elect to dispose of such sediments and spoil by hauling it to the nearest place of
15 disposal that will take such sediments and spoil. If the place of disposal is outside the lands
16 referred to in paragraph 1 hereof, the costs of such hauling and disposal shall be shared in the
17 proportions stated in paragraph 5 hereof.

18 15. The United States shall not be restricted from taking measures on its property, at
19 its sole expense, to protect habitats from the effects of the drainage in the Boundary Ditch that
20 occurs consistent with this agreement, including but not limited to improving the separating
21 berm, with or without the use of any and all sediments and spoil taken from the Boundary
22 Ditch or the Lower Ditch.

23 16. Nothing in this agreement shall be construed in a way that limits or restricts the
24 power of the United States or of the Fish and Wildlife Service to discharge fully their
25 responsibilities under applicable law.

26 17. WLMWC shall hold harmless, indemnify and defend the United States from any
27 actual or alleged liability or responsibility for the quality of the drainage water emanating
28 directly or indirectly from the lands in WLMWC's service area, including any claim of cost of

1 cleanup or remediation related to such drainage water, or damage as a result of such drainage
2 water.

3 18. Each Party shall bear its own attorney's fees and costs related to this action.

4 19. Each Party hereby agrees to release and discharge the other Party of and from any
5 and all claims, demands, obligations, damages, liabilities, loss, cost or expense of any kind or
6 nature whatsoever, past or present, ascertained or unascertained, whether or not now known,
7 suspected or claimed, that relates to or arises from or is connected to the matters alleged in
8 their respective complaints and counterclaims, except the obligations created by this
9 Stipulation and Order for Compromise Settlement.

10 20. This release includes and is intended for the benefit of each of the Parties above-
11 named, and any officers, employees, agents, accountants, attorneys, insurers, or insurance
12 carriers, or any other persons acting for, under, or in connection with such Parties, past or
13 present, and is a release of and from all claims, demands, actions, causes of action,
14 obligations, damages, liabilities, loss, cost or expense, of any kind or nature whatsoever,
15 including court costs and attorney's fees, past or present, ascertained or unascertained,
16 whether or not now known, suspected or claimed, except the obligations created by this
17 Stipulation and Order for Compromise Settlement.

18 21. Each Party hereby expressly waives the rights or benefits available under § 1542
19 of the Civil Code of the State of California, which provides that:

20 A general release does not extend to claims which the creditor
21 does not know or suspect to exist in his favor at the time of
22 executing the release, which if known by him must have
materially affected his settlement with the debtors.

23 22. This Stipulation and Order for Compromise Settlement is the compromise of
24 disputed claims and fully and finally settles all claims between the Parties, and is intended to
25 buy peace and to prevent any further involvement in the above-mentioned dispute. Neither
26 the payment of any consideration hereunder nor anything contained in this Stipulation and
27 Order for Compromise Settlement shall be interpreted or construed to be an admission on the
28 part of, nor to the prejudice of, any person or party named herein, and each such person or

1 party hereto expressly denies any and all liability regarding the dispute or the transactions that
2 gave rise to the dispute.

3 23. The Parties agree that should conflicts, disagreements or grievances arise between
4 the parties concerning the terms or performance of this Agreement, and should good faith
5 negotiation fail to resolve the matter, the Parties shall make good faith efforts to resolve such
6 disputes through informal mediation or, by agreement in writing, through formal mediation,
7 before either Party commences any litigation.

8 24. The Parties understand and agree that this Stipulation and Order for Compromise
9 Settlement shall act as a full and final release of all claims, known or unknown, whether or
10 not asserted, arising from any dispute alleged, or that could have been alleged, in the
11 complaint and counterclaims in the above-entitled action. Each party fully understands that if
12 the facts in respect to which this Stipulation and Order for Compromise Settlement is
13 executed are found thereafter to be different from the facts now believed by any party
14 described herein to be true, each party expressly accepts and assumes the risk of such
15 possibility and of such different set of facts, and agrees that this settlement agreement and
16 release shall remain effective notwithstanding such difference.

17 25. Implementation of this agreement by the United States is subject to the
18 requirements of the Anti-Deficiency Act, 31 U.S.C. § 1341, and to the availability of
19 appropriated funds. The expenditure or advance of any money or the performance of any
20 obligation of the United States under this settlement shall be contingent upon appropriation or
21 allotment of funds. No breach of this agreement shall result and no liability shall accrue to
22 the United States if funds are not appropriated or allotted. To the extent permitted by law, the
23 San Joaquin River National Wildlife Refuge shall seek the appropriations needed to fulfill the
24 terms of this agreement.

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1 Dated: October 31, 2005

McGREGOR W. SCOTT
United States Attorney

2
3 By: /s/ Y H T Himel
YOSHINORI H. T. HIMEL
4 Assistant U. S. Attorney
Attorneys for Defendant and
5 Counterclaimant
UNITED STATES OF AMERICA

6 Of Counsel:

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13 ORDER

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15 It is APPROVED and SO ORDERED.

16 DATED: November 18, 2005.

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18 /s/Lawrence K. Karlton
LAWRENCE K. KARLTON
19 SENIOR JUDGE
UNITED STATES DISTRICT COURT
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APPENDIX A

Paragraph (a):

The deeds from the Burkhard Investment Company ("BURKHARD") to the following persons and recorded at Volume and Page numbers of the Official Records of Stanislaus County, California, as indicated below, who transferred and assigned their water rights and drainage obligations to WLMWC by subsequent the grants and assignments, or who took title subject to a prior transfer of those water rights and drainage obligations to WLMWC, as shown in the recorded documents as indicated below:

(i) to Frank Goulart, a single man, dated 6/30/1941, recorded 7/14/1941, at 735 OR 584¹ (referring to former BURKHARD field No. 18A); water and drainage rights and obligations transferred to WLMWC by grant and assignment dated 9/13/1941 and recorded 10/30/1941, at 743 OR 279;

(ii) to Jose Alvarez and Lorenza Alvarez, husband and wife, dated 8/27/1941, recorded 10/30/1941, at 740 OR 368 (referring to former BURKHARD fields No. 3, 17 and 9); water and drainage rights and obligations transferred to WLMWC by grant and assignment dated 9/13/1941, recorded 10/30/1941, at 740 OR 370;

(iii) to John J. Pedro and Olive Pedro, husband and wife, dated 8/27/1941, recorded 10/30/1941, at 740 OR 375 (referring to former BURKHARD fields No. 4, 10 and 11N); water and drainage rights and obligations transferred to WLMWC by grant and assignment dated 9/13/1941, recorded 10/30/1941, at 740 OR 377;

(iv) to Fred E. Warner and Gertrude L. Warner, husband and wife, dated 8/27/1941, recorded 10/30/1941, at 743 OR 281 (referring to former BURKHARD field No. 18); water and drainage rights and obligations transferred to WLMWC by grant and assignment dated 9/13/1941, recorded 10/30/1941, at 743 OR 283;

(v) to May Flynn Jones, a widow, dated 8/27/1941, recorded 10/30/1941, at 743 OR 290 (referring to former BURKHARD field 11S); water and drainage rights and obligations transferred to WLMWC by grant and assignment dated 9/13/1941, recorded 10/30/1941, at 743 OR 291; and

(vi) to William R. Lewis and Viva L. Lewis, husband and wife, dated 1/29/1942, recorded 3/13/1942, at 753 OR 44 (referring to former BURKHARD field No. 19); subject to the prior transfer of water and drainage rights by

¹ "735 OR 584" indicates the deed recorded at Vol. 735 of the Official Records of Stanislaus County, at Page 584.

BURKHARD to WLMWC dated 10/15/1941, and recorded
10/31/1941, at 743 OR 277

Paragraph (b):

The deed from BURKHARD to Pietro Rampone, a single man, dated
6/12/1941, recorded on 7/14/1941 at 735 OR 588; title to which
later passed from Rampone to Frank Sarmento and Nancy Rampone
Sarmento, from the Sarmentos to Edwin E. and Hilma W. Hagemann
by deed recorded on 10/1/1965, at 2059 OR 610, and in 1999,
after Mr. Hagemann died, from his widow and her son (as co-
trustee of the testamentary trust contained in Mr. Hagemann's
will) to the United States of America by deed recorded on
1/29/1999 as Doc. No. 99-0009561-00 in the Official Records of
Stanislaus County, California.

APPENDIX B

(Description of Boundary Ditch)

COMMENCING at the intersection of the centerline of the West Stanislaus Irrigation District's main intake canal, as shown on the map recorded October 29, 1992, in Book 45 of Parcel Maps, at Page 49, in the Office of the Stanislaus County Recorder, with the centerline of West Stanislaus Road right-of-way, which is the most westerly corner of Parcel 2 per Document #103387, Stanislaus County Records; thence leaving said canal centerline and running along the center of the right-of-way, North 45°17'58" East, 173.99 feet, to a 3¼ inch U.S. Fish and Wildlife Service aluminum cap marked "7031, L.S. 4495, 1998", on a #5 rebar on the easterly right-of-way of the West Stanislaus Irrigation District main canal; thence leaving said right-of-way, North 74°41'38" West, 208.99 feet, to a P.K. nail with an aluminum washer marked "7032, L.S. 4495, 1998"; thence South 71°19'06" West, 111.06 feet, to a point on the centerline of the BOUNDARY DITCH, from which a 3¼ inch U.S. Fish and Wildlife Service aluminum cap marked "7033, L.S. 4495, 1998", on a #5 rebar bears South 01°04'31" East, 16.64 feet, and the TRUE POINT OF BEGINNING of this description:

THENCE continuing along the centerline of said BOUNDARY DITCH for the following 29 courses:

North	65°42'49"	West,	539.22	feet;
North	48°45'49"	West,	299.08	feet;
North	44°25'49"	West,	382.03	feet;
North	06°19'49"	West,	272.79	feet;
North	26°39'49"	West,	253.39	feet;
South	89°38'11"	West,	314.31	feet;
North	45°30'47"	West,	88.32	feet;
North	45°40'49"	West,	396.85	feet;
North	21°57'49"	West,	366.74	feet;
North	36°29'49"	West,	968.62	feet;
North	24°52'49"	West,	270.15	feet;
North	28°39'49"	West,	332.53	feet;
North	15°22'49"	West,	307.47	feet;
North	26°39'11"	East,	405.69	feet;
North	04°53'11"	East,	479.73	feet;
North	36°33'48"	West,	132.66	feet;
North	69°12'49"	West,	369.19	feet;
North	67°48'49"	West,	198.16	feet;
North	16°15'49"	West,	148.90	feet;
North	02°12'49"	West,	589.47	feet;
North	11°47'49"	West,	256.77	feet;
North	03°39'49"	West,	295.35	feet;
North	05°58'11"	East,	531.75	feet;
North	23°45'11"	East,	520.97	feet;
North	40°01'11"	East,	778.41	feet;
North	22°32'11"	East,	595.99	feet;

North 32°14'10" East, 279.40 feet;
North 51°56'11" East, 819.84 feet;
North 18°34'11" East, 272.57 feet;

To the point of termination of the BOUNDARY DITCH.

APPENDIX C

(Description of Lower Ditch)

COMMENCING at the point of termination of the BOUNDARY DITCH described hereinabove; thence along the centerline of the LOWER DITCH for the following 14 courses:

South	60°23'51"	East,	490.31	feet;
North	04°03'13"	West,	137.01	feet;
North	06°58'06"	East,	222.15	feet;
North	76°15'49"	East,	113.50	feet;
South	86°29'47"	East,	120.28	feet;
North	80°32'16"	East,	223.55	feet;
North	71°44'14"	East,	258.00	feet;
South	80°08'03"	East,	285.98	feet;
North	37°39'50"	East,	100.24	feet;
North	00°30'58"	West,	271.97	feet;
North	44°11'35"	East,	246.03	feet;
North	56°21'32"	East,	332.55	feet;
North	67°05'39"	East,	188.84	feet;
North	37°15'59"	East,	141.62	feet;

To the pumping station that pumps said DRAINAGE WATERS into the San Joaquin River or the slough connecting to the San Joaquin River (herein called the "TERMINAL PUMPING STATION")